

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

JENNIFER A. TAYLOR,
Claimant Below, Petitioner

vs.) No. 100842 (BOR Appeal No. 2043923)
(Claim No. 2009067688)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent

and

GENESIS HEALTHCARE CORPORATION,
Employer Below, Respondent

FILED
June 9, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated June 4, 2010, in which the Board reversed a December 1, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges reversed the claims administrator's December 10, 2008 Order, which rejected Ms. Taylor's claim that she suffered a compensable lumbar sprain, due to medical evidence of preexisting sciatica. The appeal was timely filed by the petitioner. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Revised Rule 1(d), this matter should be, and hereby is, set for consideration under the Revised Rules of Appellate Procedure. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Board of Review reversed the Office of Judge's Order, which held Ms. Taylor's claim compensable for a lumbar strain. Ms. Taylor argues that her claim should be held

compensable because she reported her injury immediately to her employer, despite the fact that she did not seek treatment for more than two months following the alleged injury. Ms. Taylor claims that she suffered a back sprain while assisting a patient because the patient began to fall and took Ms. Taylor down with him. Also, despite reports of preexisting sciatica, Ms. Taylor claims that she was never diagnosed with sciatica. She did have some problems with her sciatic nerve during her pregnancy due to the positioning of the baby; however, save for an occasional flare up shortly after giving birth to the child, Ms. Taylor has not had any remaining issues.

In reversing the Office of Judges, the Board of Review noted that, although Ms. Taylor claims to have completed an incident report, one was not submitted into evidence. (June 4, 2010 Board of Review Order, p.2.) It also highlighted the fact that Ms. Taylor did not seek medical treatment for this claimed injury until more than two months following its alleged occurrence. *Id.* Finally, the doctor with whom she initially treated indicated preexisting sciatica. *Id.* Therefore, the Board of Review reinstated the claims administrator's order due to the finding of preexisting sciatica. *Id.* at p. 3.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. Therefore, the denial of petitioner's claim is affirmed.

Affirmed.

ISSUED: June 9, 2011

CONCURRED IN BY:

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Chief Justice Margaret Workman

Justice Menis E. Ketchum